

ADA Retrofits Triggered by Paving: What, When, and Why

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Asphalt Paving and the ADA



ADA

22ND ANNIVERSARY

July 26th, 1990 –
July 26th, 2012

Americans
With Disabilities Act



News Articles

Chicago agrees to Pay Largest ADA Curb Ramp Settlement Ever -- \$50,000,000 in New Money

SETTLEMENT

The Council for Disability Rights, a local nonprofit, announces the settlement of its lawsuit demanding the City of Chicago comply with the law when it resurfaces streets. Chicago will spend over \$140,000,000 in the next 5 years installing curb ramps that comply with the Americans with Disabilities Act (ADA). This includes \$50,000,000 in new money to repair and replace curb ramps and sidewalks in high traffic areas which are not on the City's schedule for repair or replacement, which is annually funded at about \$18,000,000. This is the largest ADA settlement ever. If there is a bad curb ramp, any Chicagoan can call 311 to complain and have it fixed. This case was filed in Federal Court in the Northern District of Illinois as 2005 cv 05689, Council for Disability Rights, et.al, v. The City of Chicago.

Illinois ADA Project

<http://www.ada-il.org/news/curb-ramp-settlement.php>



Project Civic Access



The following settlement agreements resolve cases that are part of the Department's **Project Civic Access**, a wide-ranging effort to ensure that counties, cities, towns, and villages comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life. The Department has conducted reviews in 50 states, as well as Puerto Rico and the District of Columbia, and is posting the agreements to help additional communities come into compliance with the Act.

[Civic Access Fact Sheet](#)

[Cities and Counties: Solving Common ADA Problems](#)

[Tool Kit For State and Local Governments](#)

- [Providence, Rhode Island](#) 10/4/12
- [Schuylkill County, Pennsylvania](#) 2/12/12
- [Kansas City, Missouri](#) 7/25/12
- [Randolph County, Georgia](#) 7/24/12
- [City of Wills Point, Texas](#) 7/24/12
- [Humboldt, Kansas](#) 2/22/12
- [Upshur County, Texas](#) 11/22/11
- [Town of Warrenton, Virginia](#) 2/22/11
- [Montgomery County, Maryland and Maryland National Capital Park and Planning Commission](#) 2/12/11
- [City of Madison, IN](#) 7/22/11
- [Daviess County, KY](#) 7/22/11

b) Alterations. (1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner **that affects or could affect the usability of the facility** or part of the facility shall, to the maximum extent feasible, **be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities**, if the alteration was commenced after January 26, 1992.



From Title II of the ADA, 28 CFR, 35.151

(i) Curb ramps.

- (1) Newly constructed or **altered streets, roads, and highways** must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.
- (2) Newly constructed or **altered street level pedestrian walkways** must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.



“Title II of the ADA requires state and local governments to make pedestrian crossings accessible to people with disabilities by providing curb ramps.”

From USDOJ “ADA Tool Kit”



“Curb ramps must be located **wherever there are curbs or other barriers** to entry from a pedestrian walkway or sidewalk, ...”

From USDOJ “ADA Tool Kit”



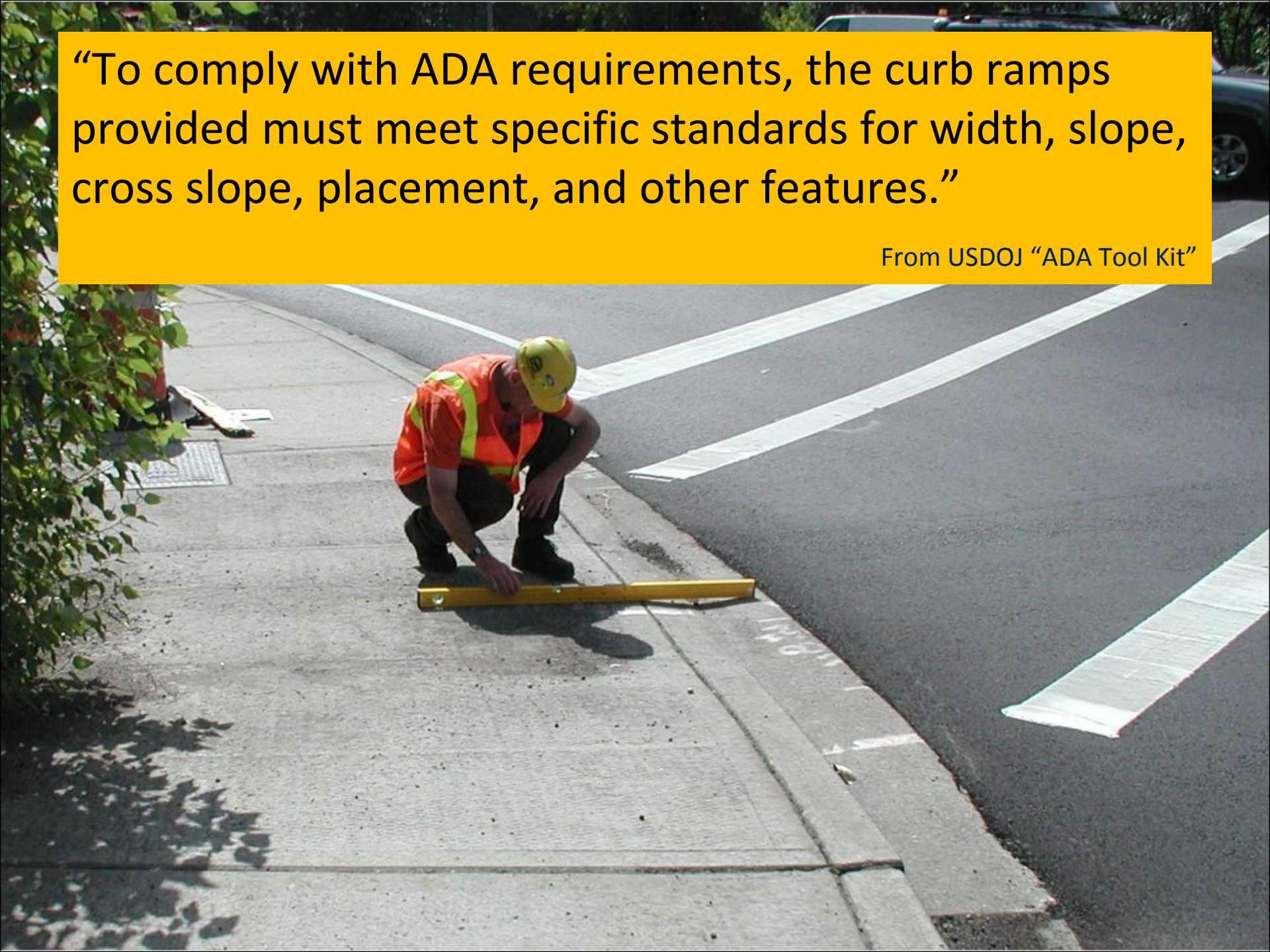


“...including any intersection where it is legal for a pedestrian to cross the street, whether or not there is any designated crosswalk.”

From USDOJ “ADA Tool Kit”

“To comply with ADA requirements, the curb ramps provided must meet specific standards for width, slope, cross slope, placement, and other features.”

From USDOJ “ADA Tool Kit”



WHY



**PAVING = ALTERATION OF THE STREET
= CURB RAMP REQUIREMENTS**





The landmark court case *Kinney vs. Yerusalim* (1993) established that **paving a street crossing is an alteration of the street crossing** under Title II of the ADA ,and thus **curb ramps must be installed to make the street crossing accessible to people with disabilities.** The reasoning of the court was as follows:



“Resurfacing makes driving on and crossing streets easier and safer. It also helps to prevent damage to vehicles and injury to people, and generally promotes commerce and travel. The surface of a street is the part of the street that is ‘used’ by both pedestrians and vehicular traffic. When that surface is improved, the street becomes more usable in a fundamental way.”

Kinney v Yerusalim decision



“Both physically and functionally, a street consists of its surface; from a utilitarian perspective, a street is a two-dimensional, one-plane facility. As intended, a street facilitates smooth, safe, and efficient travel of vehicles and pedestrians...this is its ‘primary function’...resurfacing a street affects it in ways integral to its purpose.”

Kinney v Yerusalim decision



“...the regulation serves the substantive purpose of requiring equal treatment: if an alteration renders a street more ‘usable’ to those presently using it, such increased utility must also be made fully accessible to the disabled through the installation of curb ramps.”

Kinney v Yerusalim decision

“...the Attorney General has already determined, in promulgating §35.151(e), that the installation of curb cuts is feasible during the course of alterations to a street.”

Kinney v Yerusalim decision

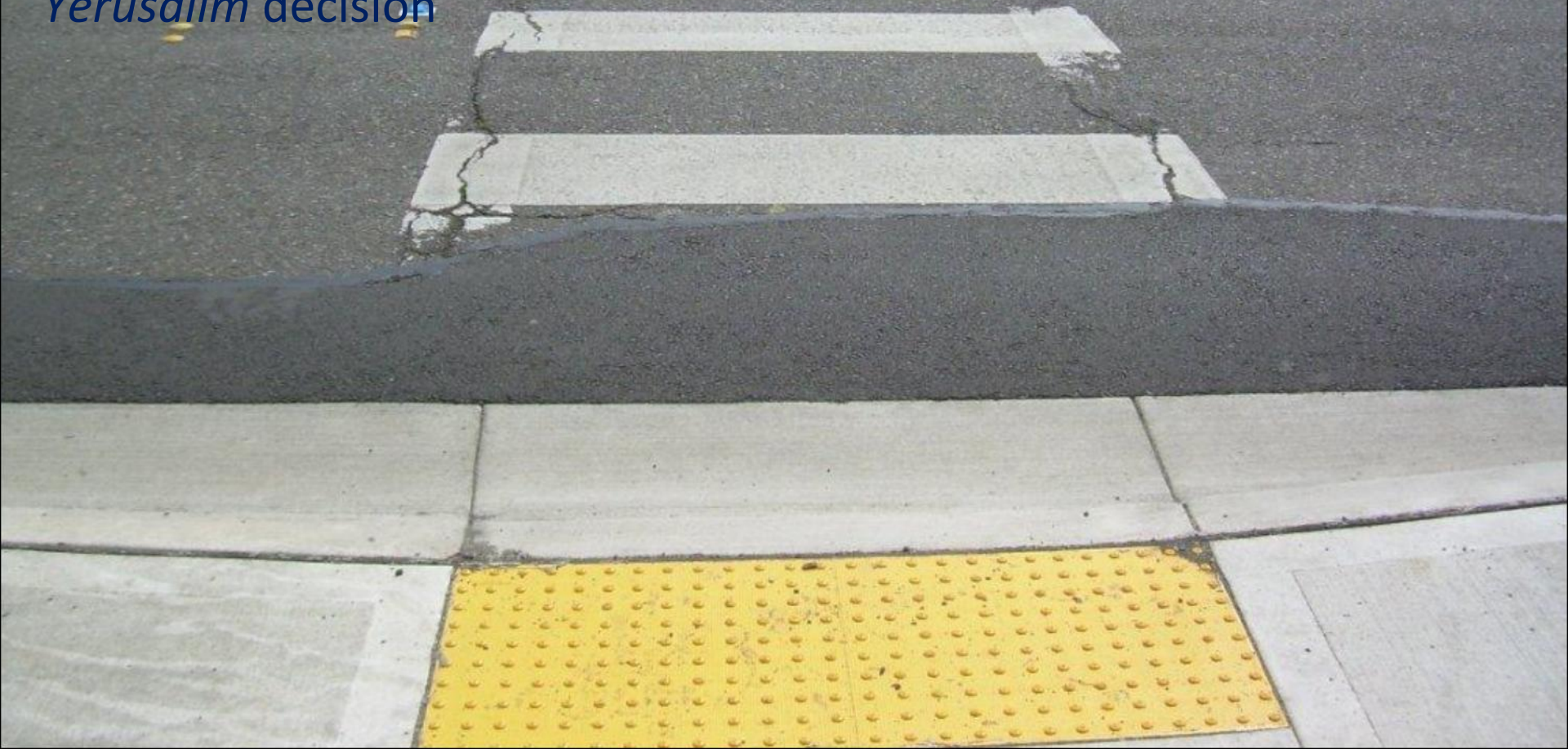


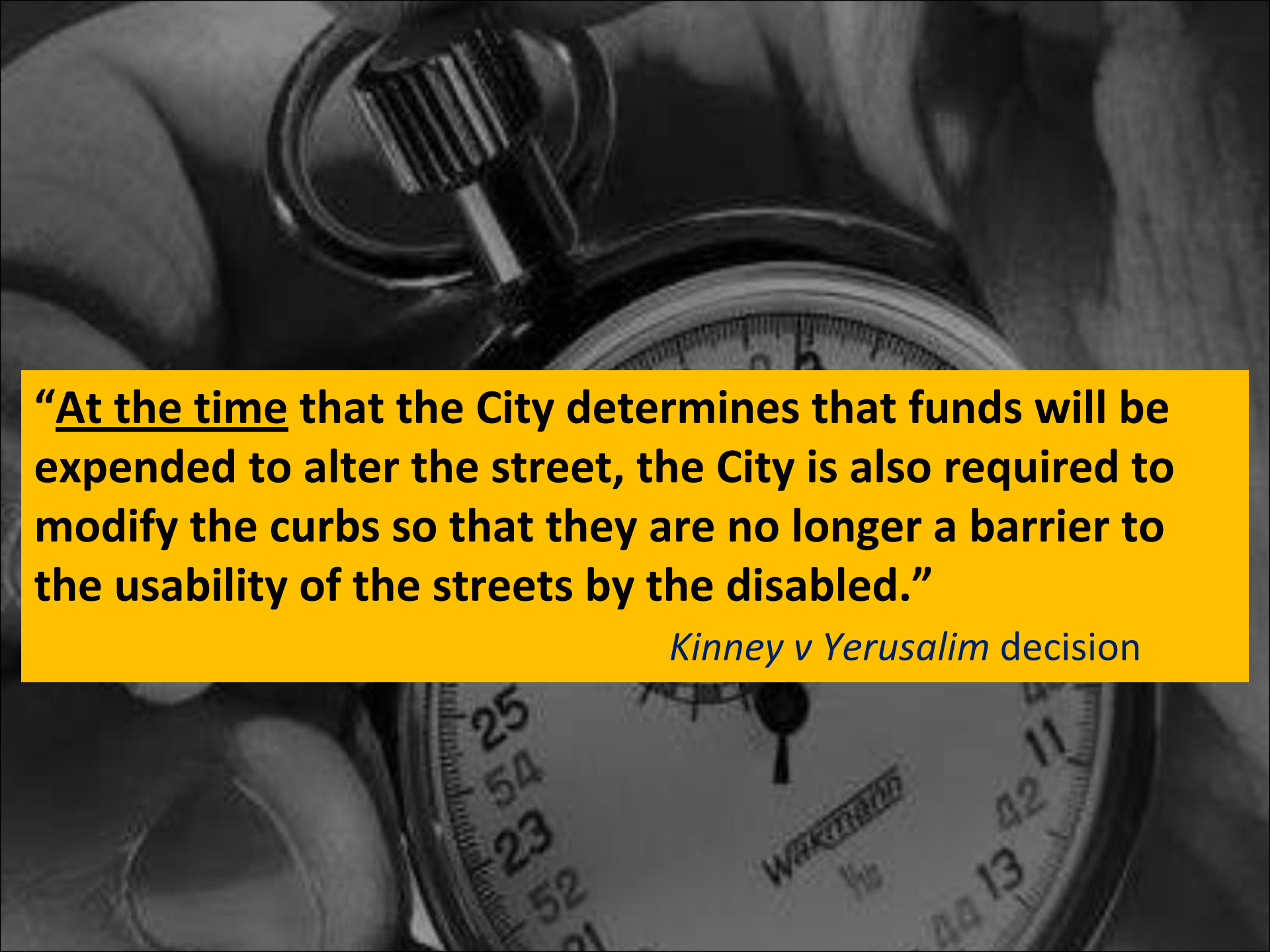
07/20/2010

“Subpart (e) effectively unifies a street and its curbs for treatment as interdependent facilities. If a street is to be altered to make it more usable for the general public, it must also be made more usable for those with ambulatory disabilities.”

Kinney v

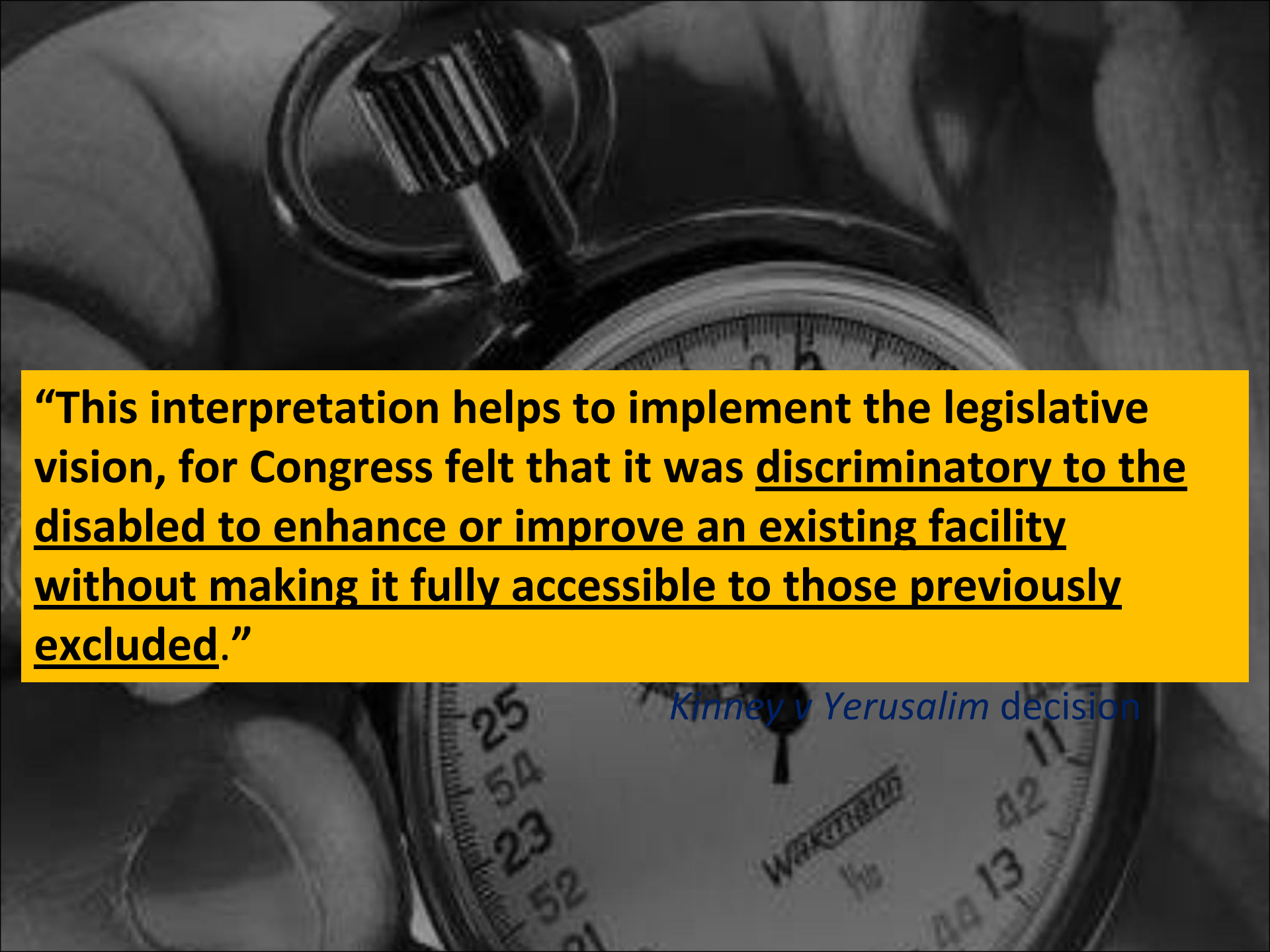
Yerusalim decision





“At the time that the City determines that funds will be expended to alter the street, the City is also required to modify the curbs so that they are no longer a barrier to the usability of the streets by the disabled.”

Kinney v Yerusalim decision



“This interpretation helps to implement the legislative vision, for Congress felt that it was discriminatory to the disabled to enhance or improve an existing facility without making it fully accessible to those previously excluded.”

Kinney v Yerusalim decision

Per



U.S. Department of Transportation
Federal Highway Administration

“Projects altering the usability of the roadway must incorporate accessible pedestrian improvements at the same time as the alterations to the roadway occur.”

From FHWA 2006 “Clarification” Memo

Per



U.S. Department of Transportation
Federal Highway Administration



“Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect.”

From FHWA Office of Civil Rights FAQ

Per



U.S. Department of Transportation
Federal Highway Administration

“If a project resurfaces the street, for accessibility purposes the curbs and pavement at the pedestrian crosswalk are in the scope of the project, but the sidewalks are not.”

From FHWA Office of Civil Rights FAQ



Per



U.S. Department of Transportation
Federal Highway Administration

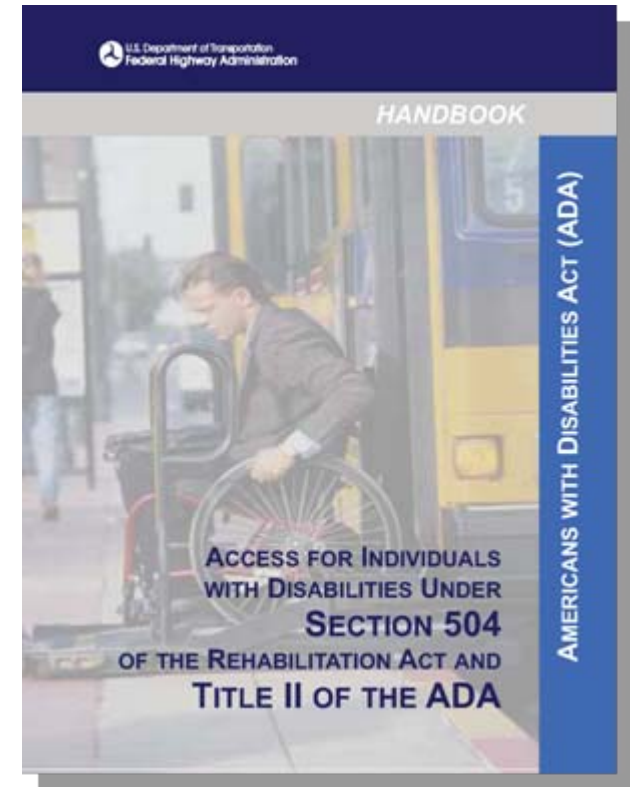
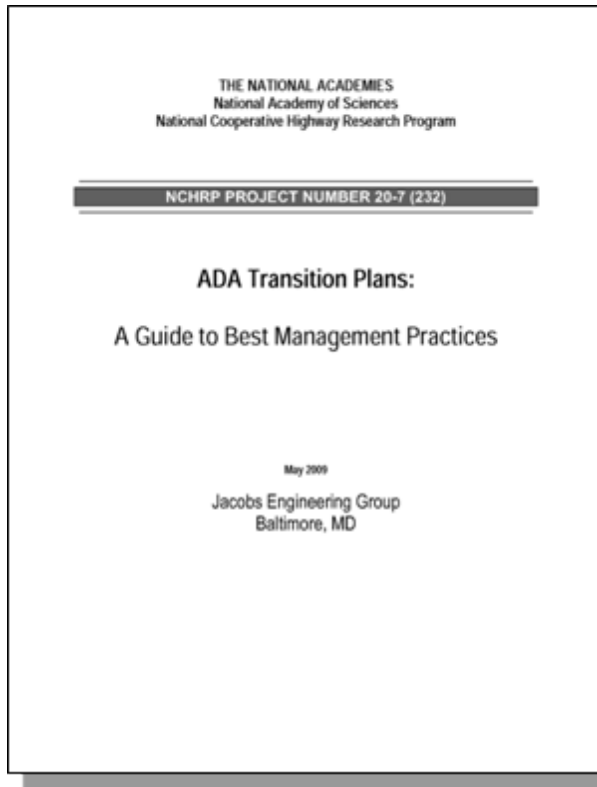
“Any of the features disturbed by the construction must be replaced so that they are accessible.”

From FHWA Office of Civil Rights FAQ

Per



U.S. Department of Transportation
Federal Highway Administration



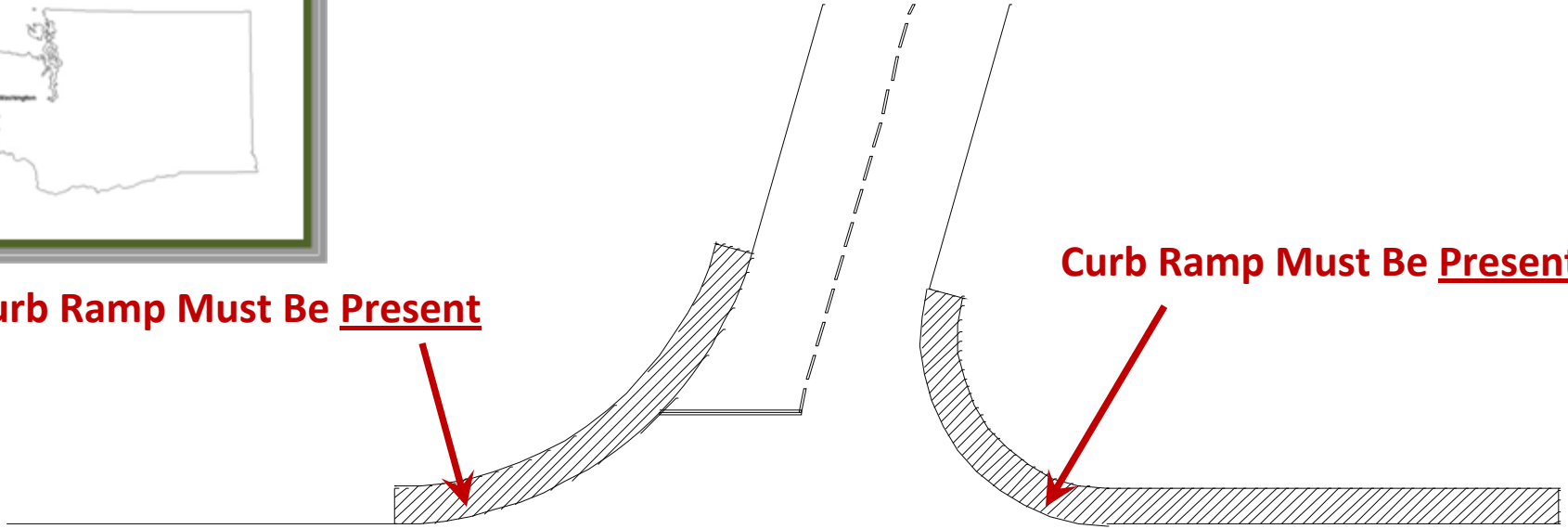
“All remaining access improvements within the public right-of-way shall occur within the schedule provided in the public agency’s planning process.”

From FHWA Office of Civil Rights FAQ



Curb Ramp Must Be Present

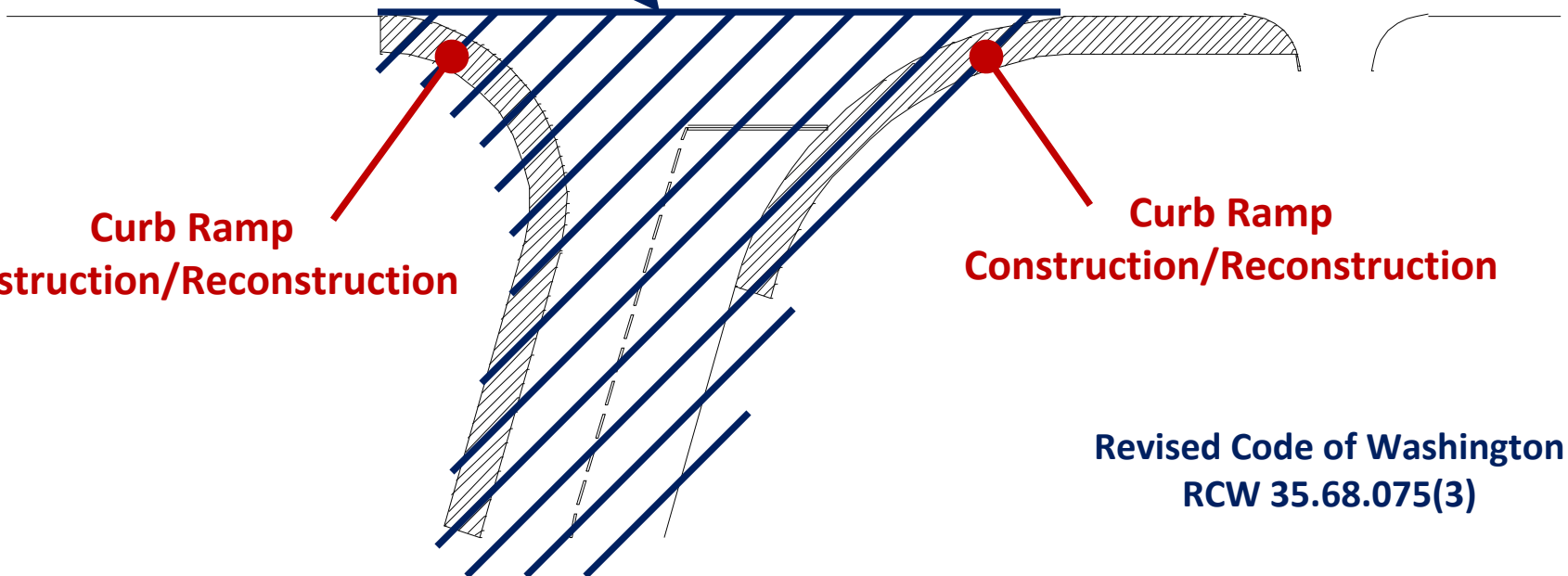
Curb Ramp Must Be Present



**Project Limit
Paving Limit**

**Curb Ramp
Construction/Reconstruction**

**Curb Ramp
Construction/Reconstruction**



**Revised Code of Washington
RCW 35.68.075(3)**



**Available
Funding**

**Preservation
Needs**

Pavement Condition Index

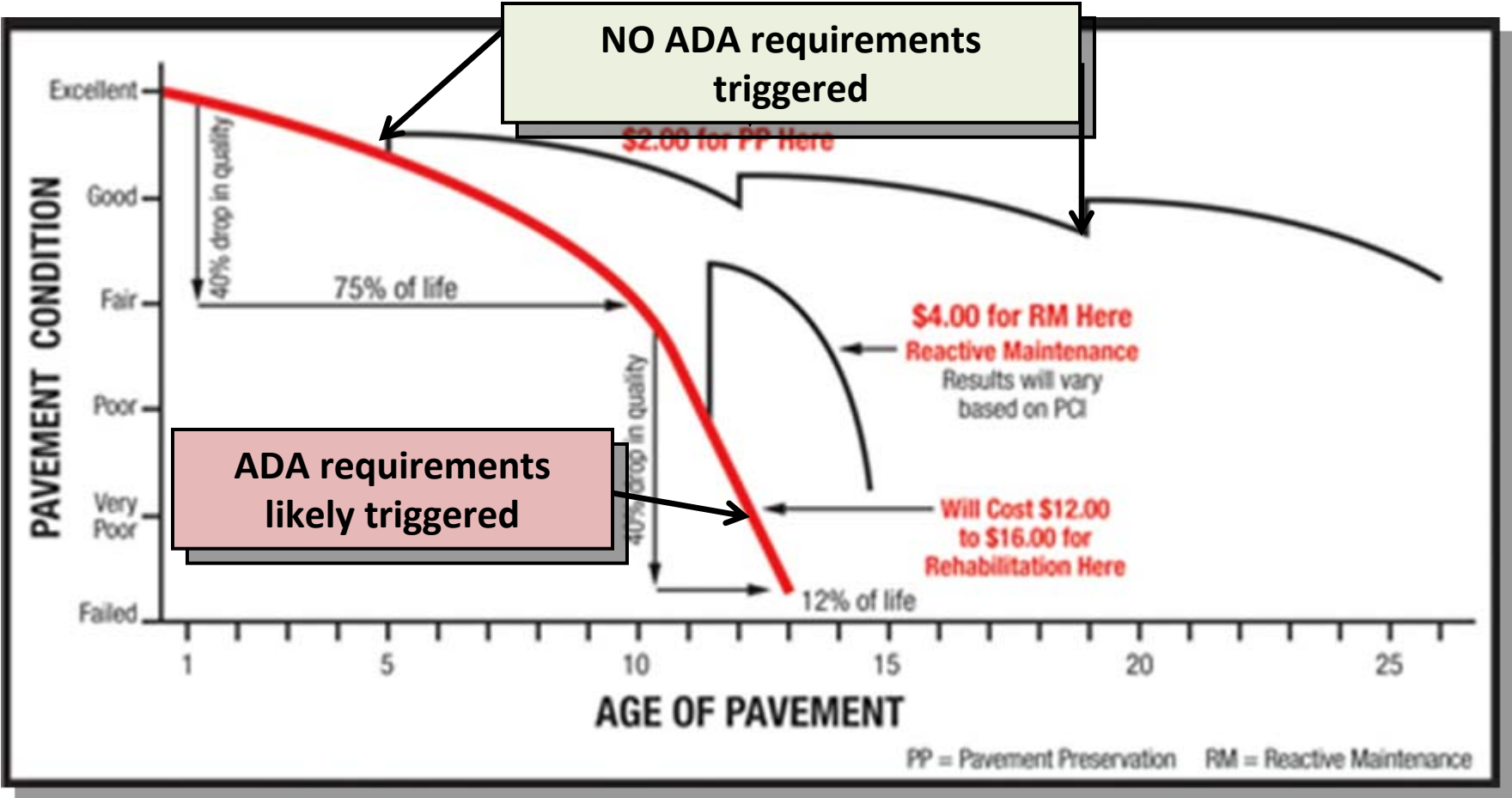


Chart - U.S. Department of Transportation – Federal Highway Administration
Cost Scenarios – International Slurry Surfacing Association - www.slurry.org

Per



Resurfacing a roadway beyond normal maintenance is an alteration...

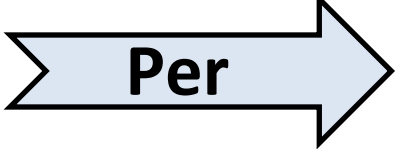
...filling potholes is not.



Per



Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.



Maintenance activities are not considered alterations...

Maintenance activities include...

- Spot Pavement Repair**
 - Pothole Repair
 - Shoulder Repair
- Crack Sealing**
 - Joint Repair
- Re-Striping**
- Signing**
- Minor Signal Work**
- Drainage Repair**
- “Nonstructural” Overlay**
 - Chip Seal (BST)

Per



U.S. Department of Transportation
Federal Highway Administration

Maintenance activities are not considered alterations...

Maintenance activities include...

Spot Pavement Repair

- Pothole Repair
- Shoulder Repair



Per



U.S. Department of Transportation
Federal Highway Administration

Maintenance activities are not considered alterations...
Maintenance activities include...

Crack Sealing

- Joint Repair



Per



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Federal Highway Administration

Maintenance activities are not considered alterations...
Maintenance activities include...

Re-Striping



Per



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Maintenance activities are not considered alterations...
Maintenance activities include...



Signing



Per



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Maintenance activities are not considered alterations...
Maintenance activities include...



Minor Signal Work



Per



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Maintenance activities are not considered alterations...
Maintenance activities include...



Drainage Repair



Per



U.S. Department of Transportation
Federal Highway Administration

Maintenance activities are not considered alterations...
Maintenance activities include...



“Nonstructural” Overlay

• Chip Seal (BST)





“At issue in this are those resurfacings which cover, at a minimum, an entire street from intersection to intersection. Thus, we are not called upon to decide whether minor repairs or maintenance trigger the obligations of accessibility for alterations under the ADA.”

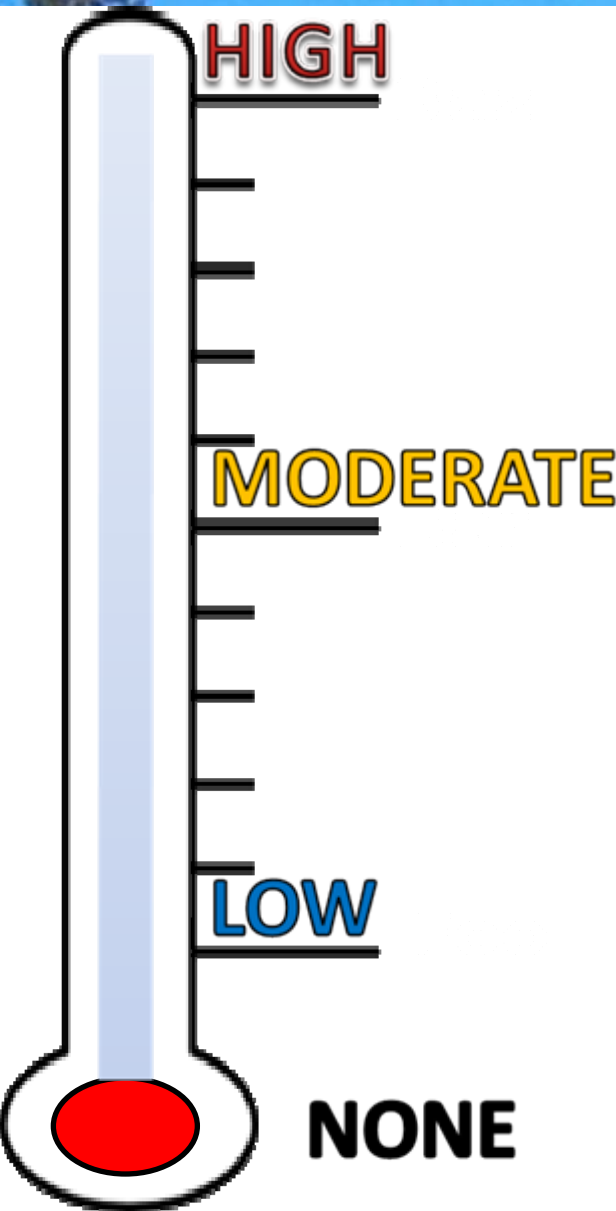
Kinney v Yerusalim decision



“...’resurfacing’ involves more than minor repairs or maintenance. At a minimum, it requires the laying of a new asphalt bed spanning the length and width of a city block.”

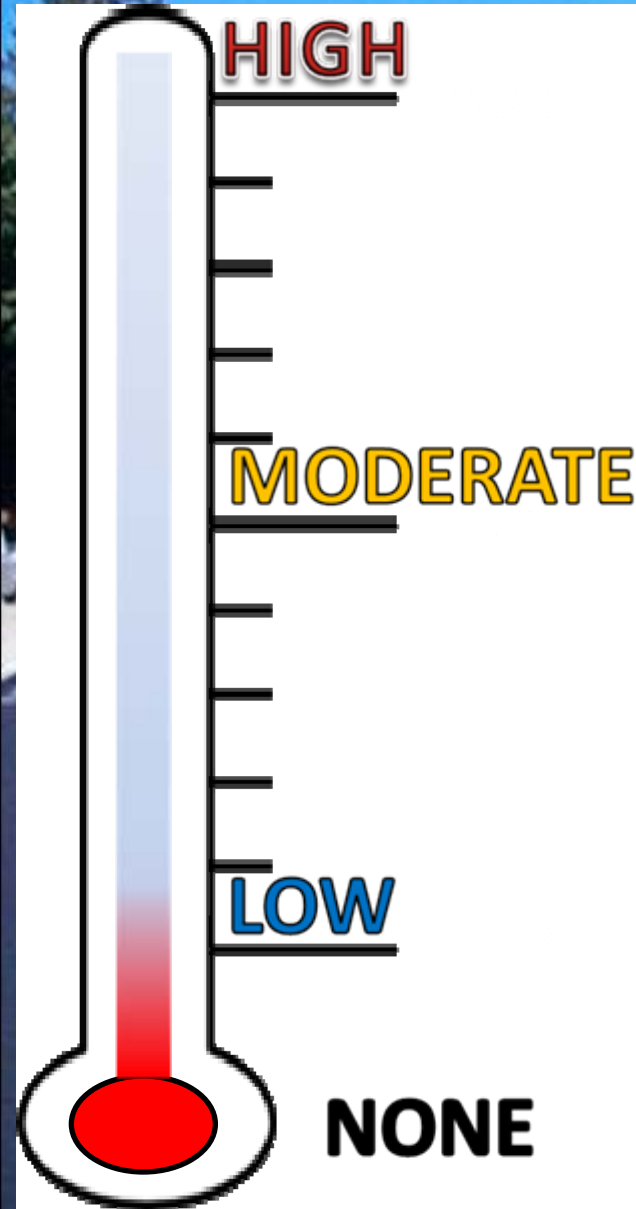
Kinney v Yerusalim decision

RISK METER



- Limited Access Freeway
 - Pedestrians Prohibited
 - Rural Highway with NO Sidewalks
- ANY DEPTH ANY WIDTH ANY LENGTH**

RISK METER



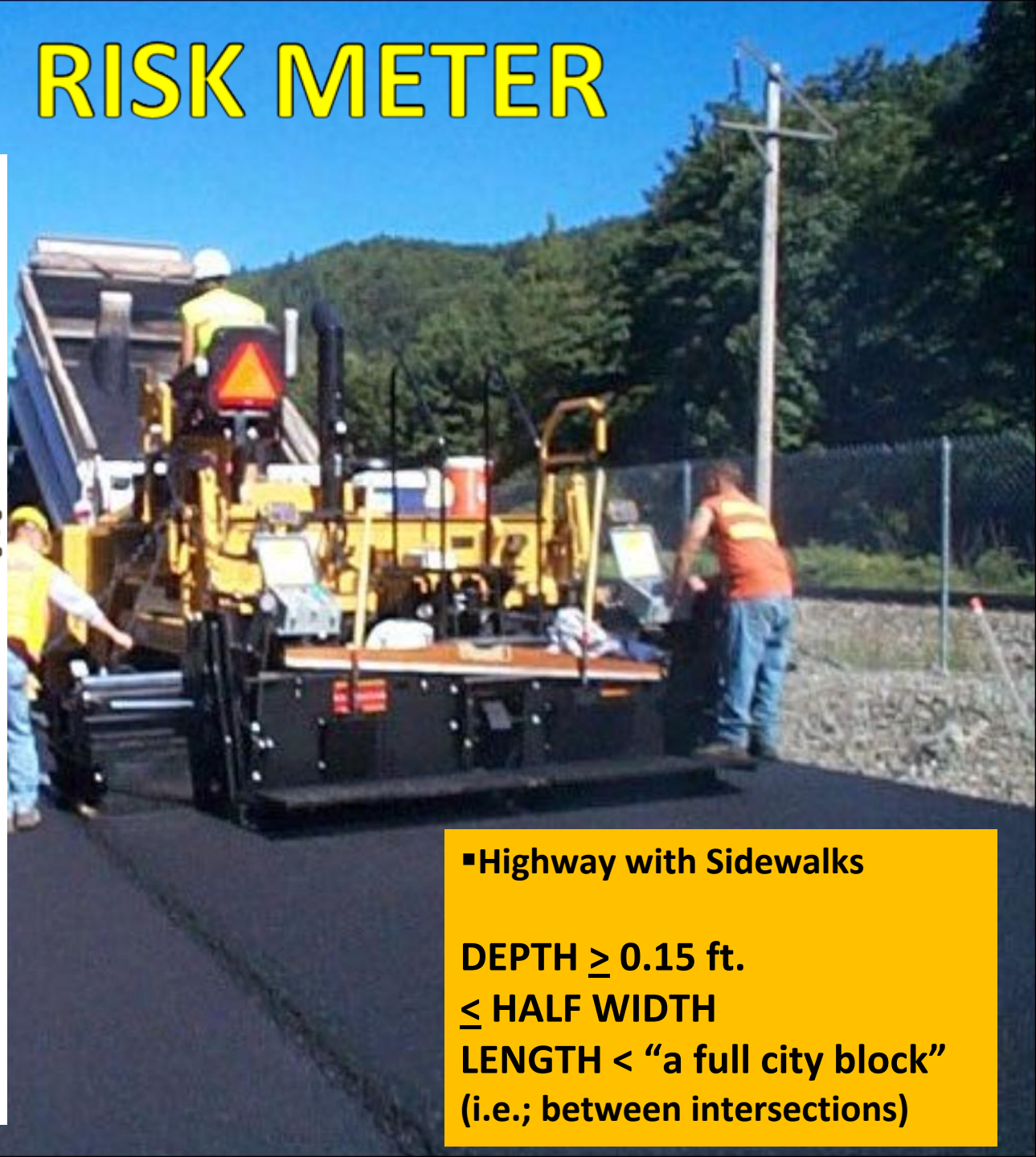
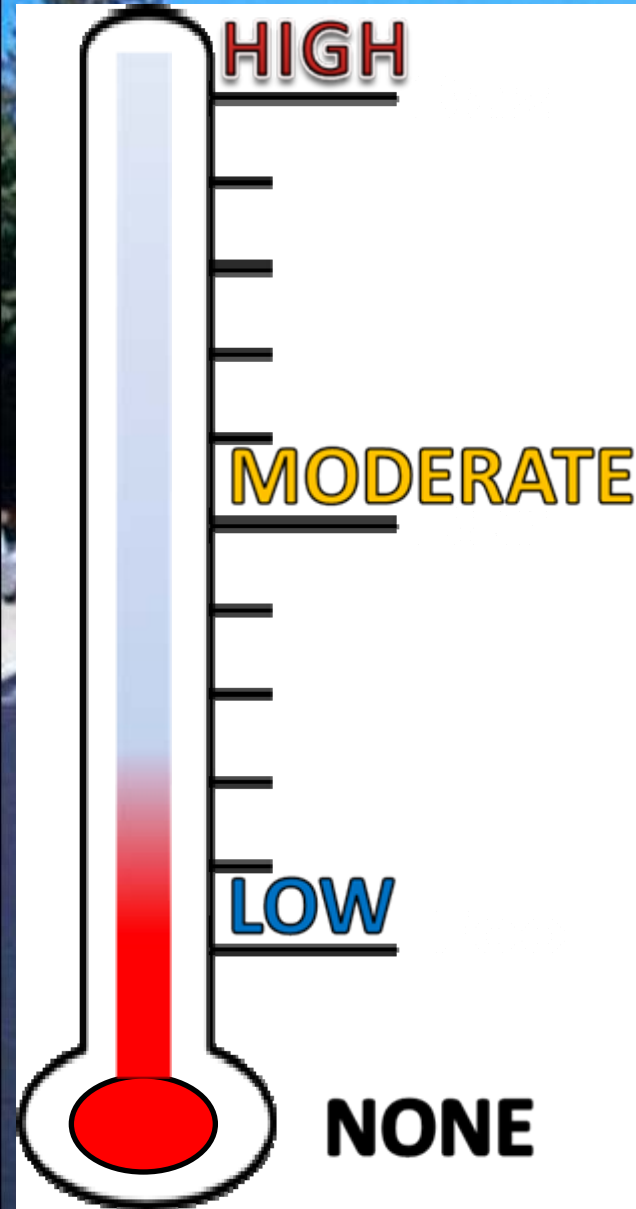
▪ Highway with Sidewalks

DEPTH = 0.04 – 0.12 ft.

≤ HALF WIDTH

LENGTH < “a full city block”
(i.e.; between intersections)

RISK METER



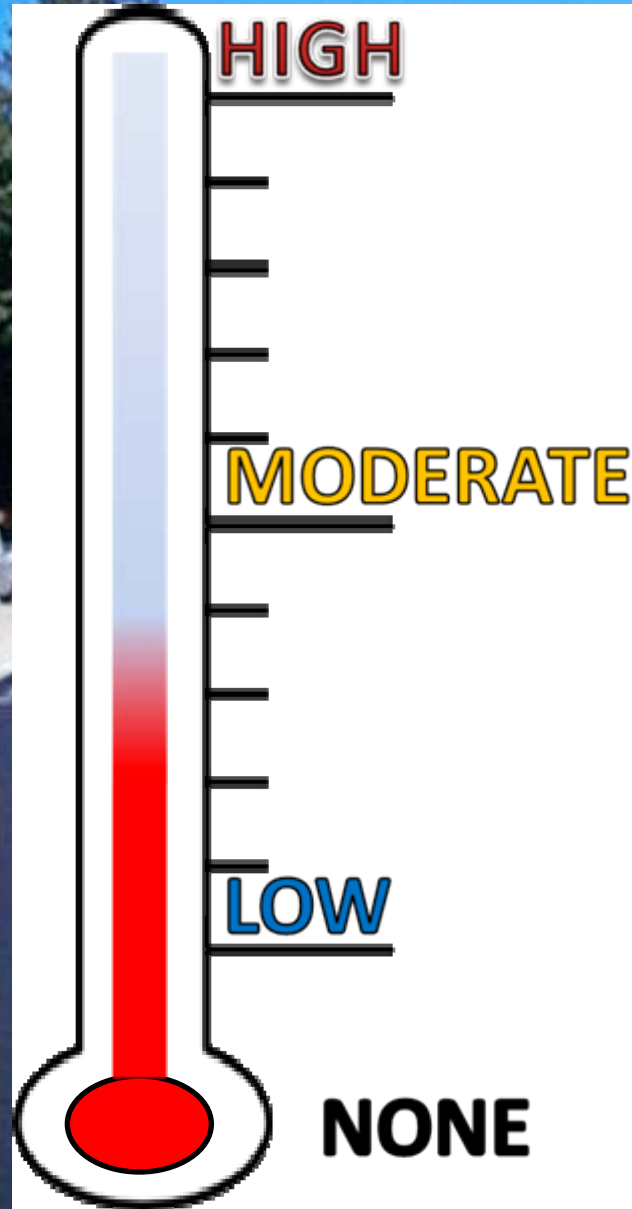
▪ Highway with Sidewalks

DEPTH \geq 0.15 ft.

\leq HALF WIDTH

LENGTH < "a full city block"
(i.e.; between intersections)

RISK METER



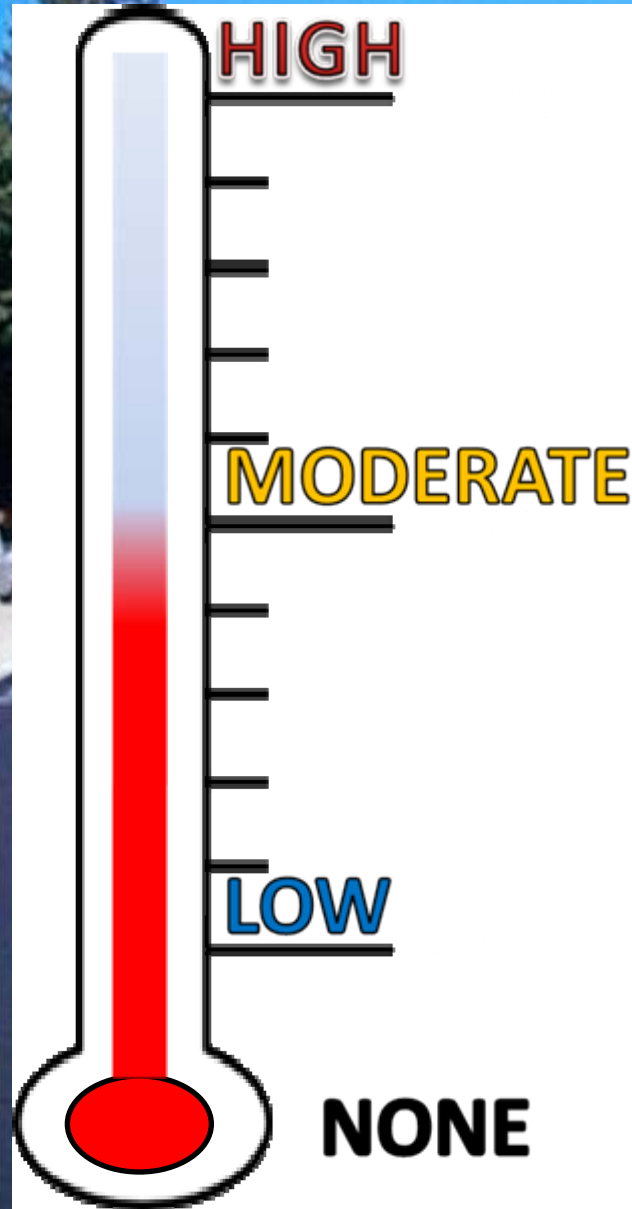
▪ Highway with Sidewalks

DEPTH = 0.04 – 0.12 ft.

FULL WIDTH (curb to curb)

LENGTH < “a full city block”
(i.e.; between intersections)

RISK METER



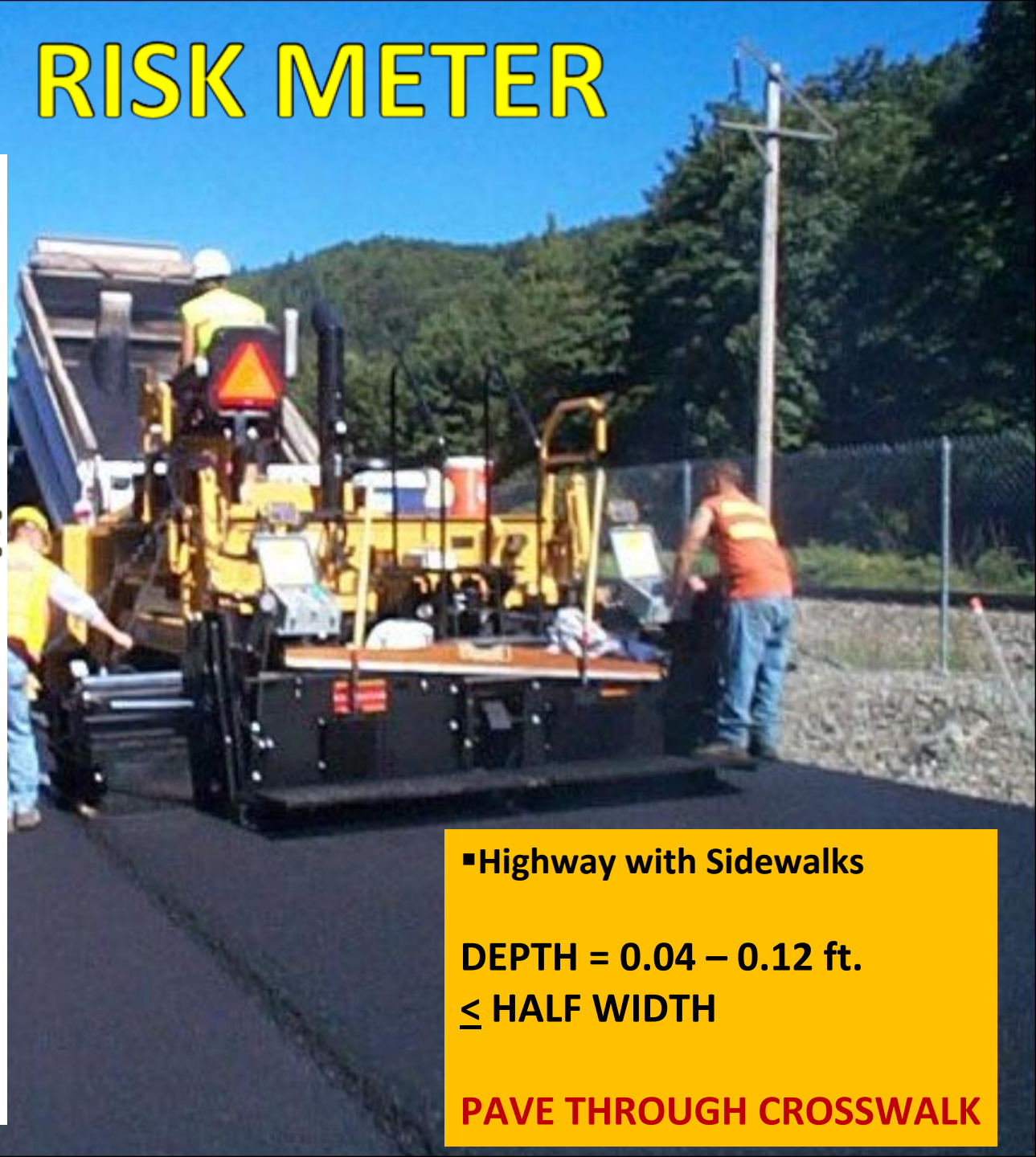
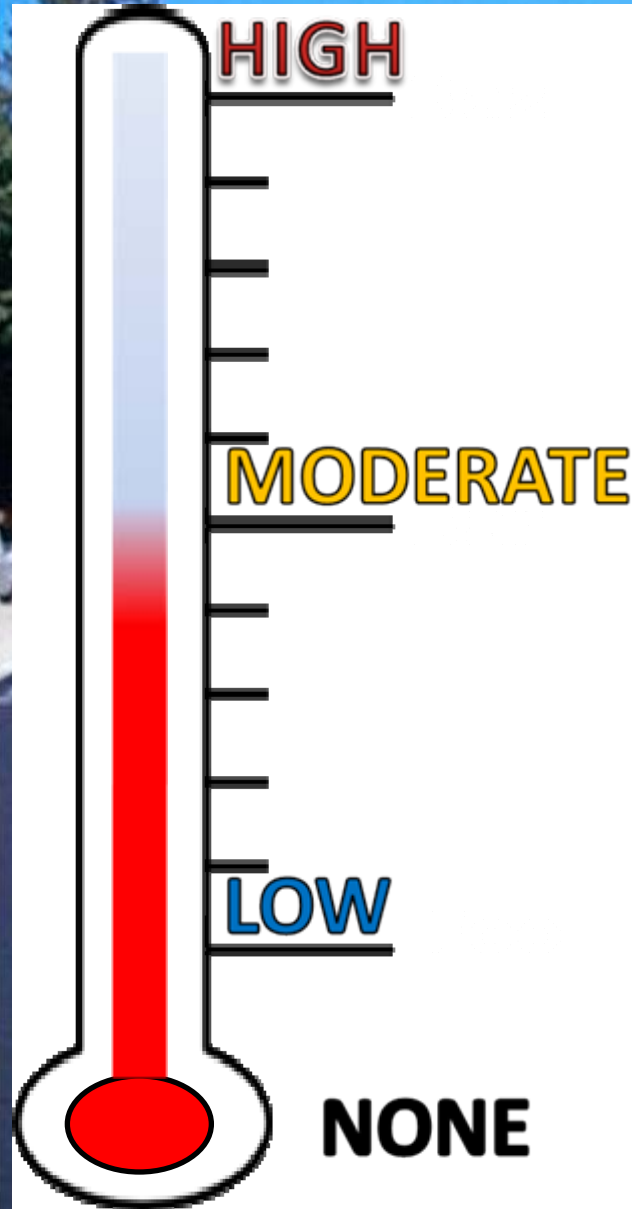
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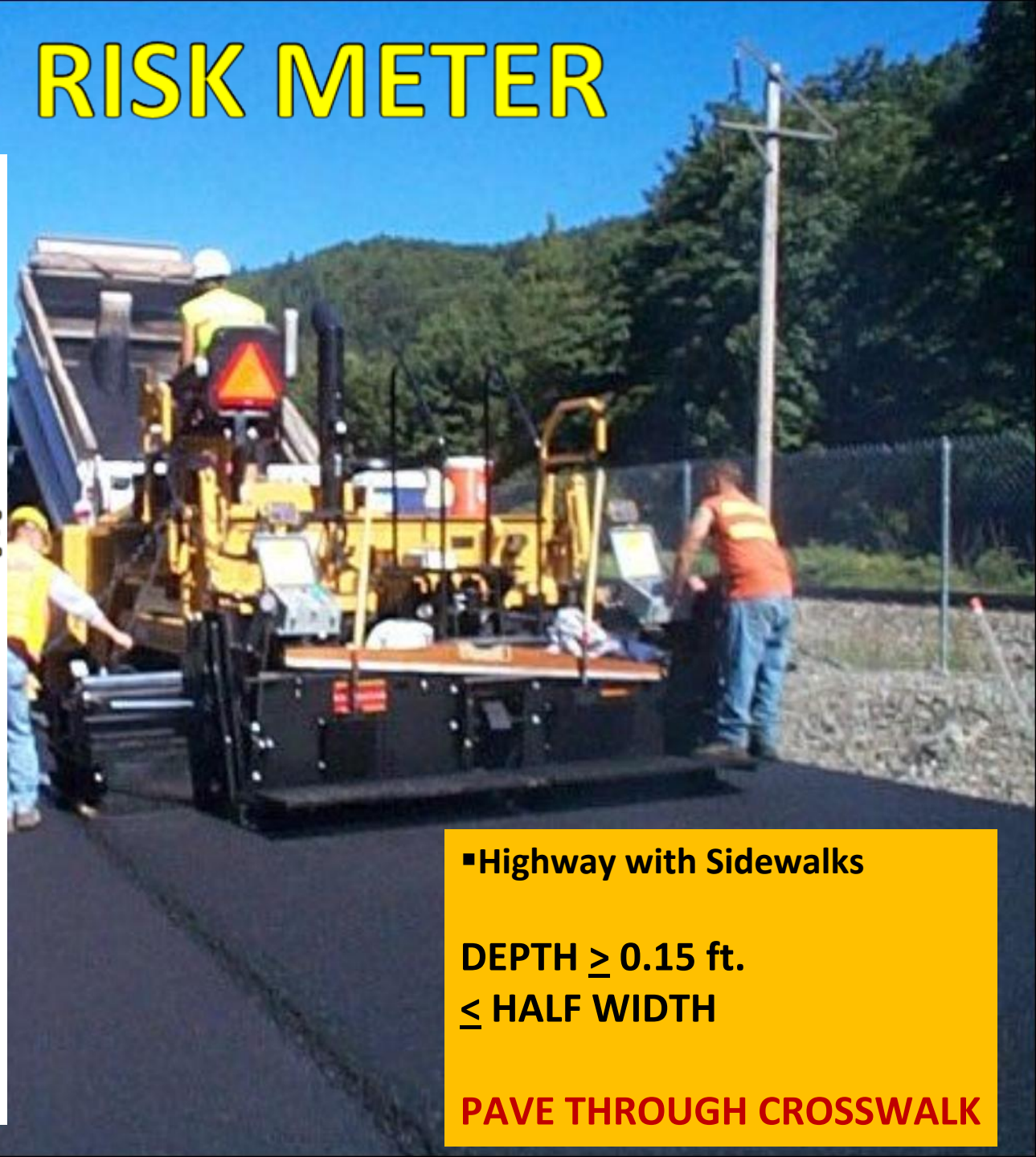
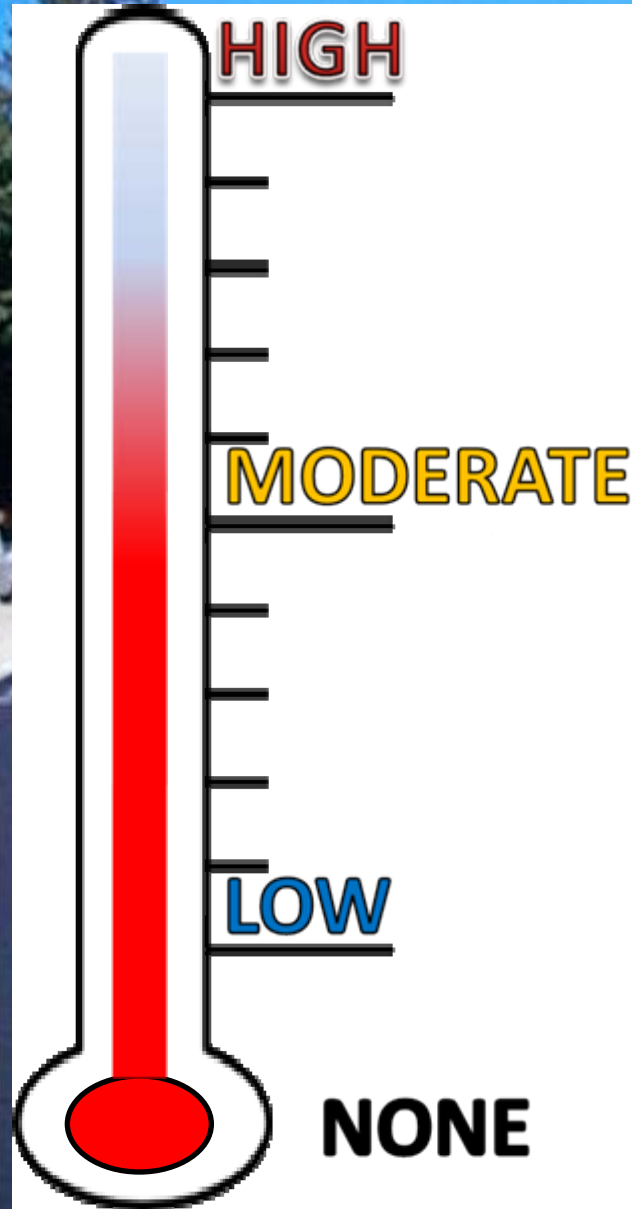
▪ Highway with Sidewalks

DEPTH = 0.04 – 0.12 ft.

≤ HALF WIDTH

PAVE THROUGH CROSSWALK

RISK METER



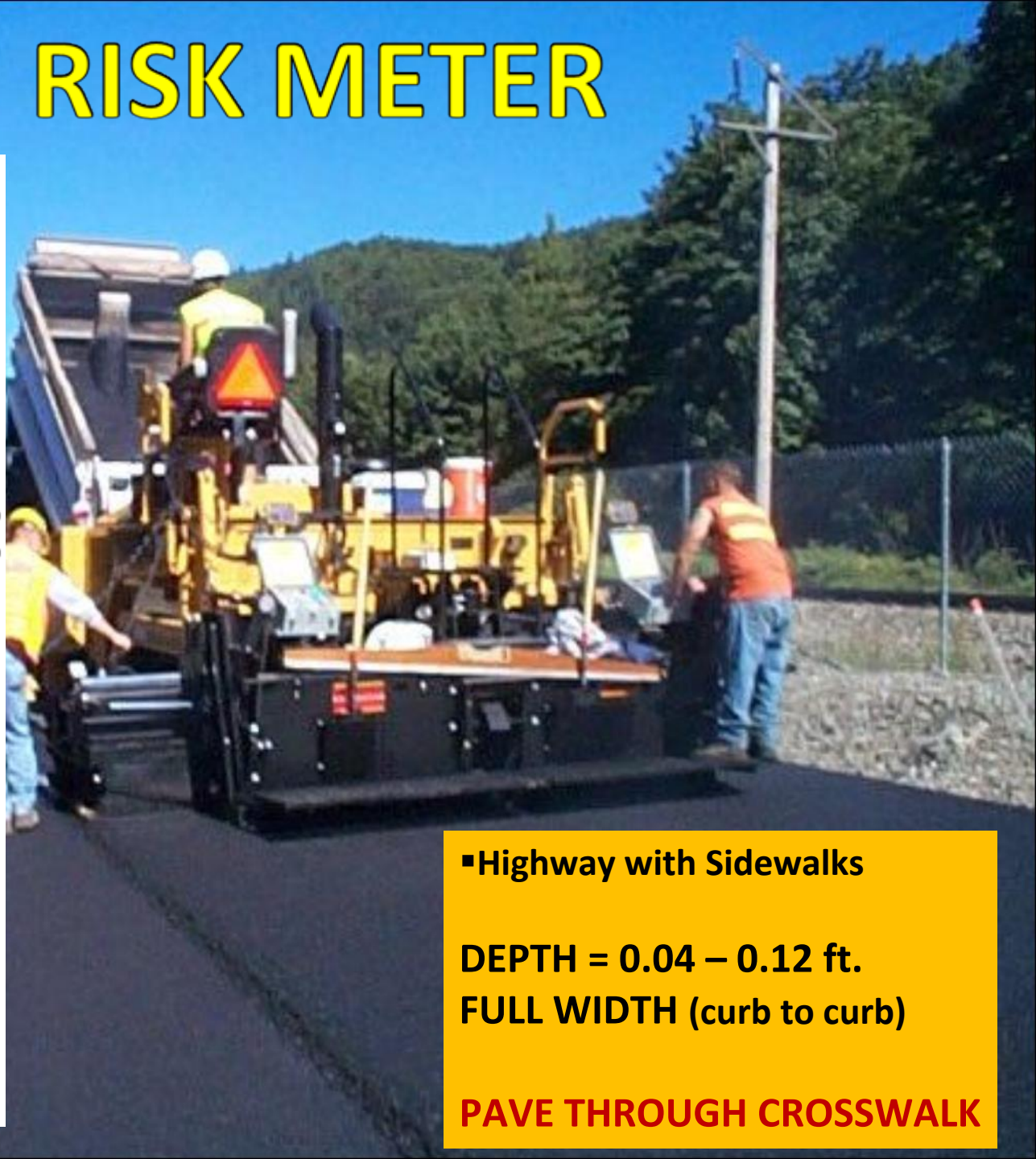
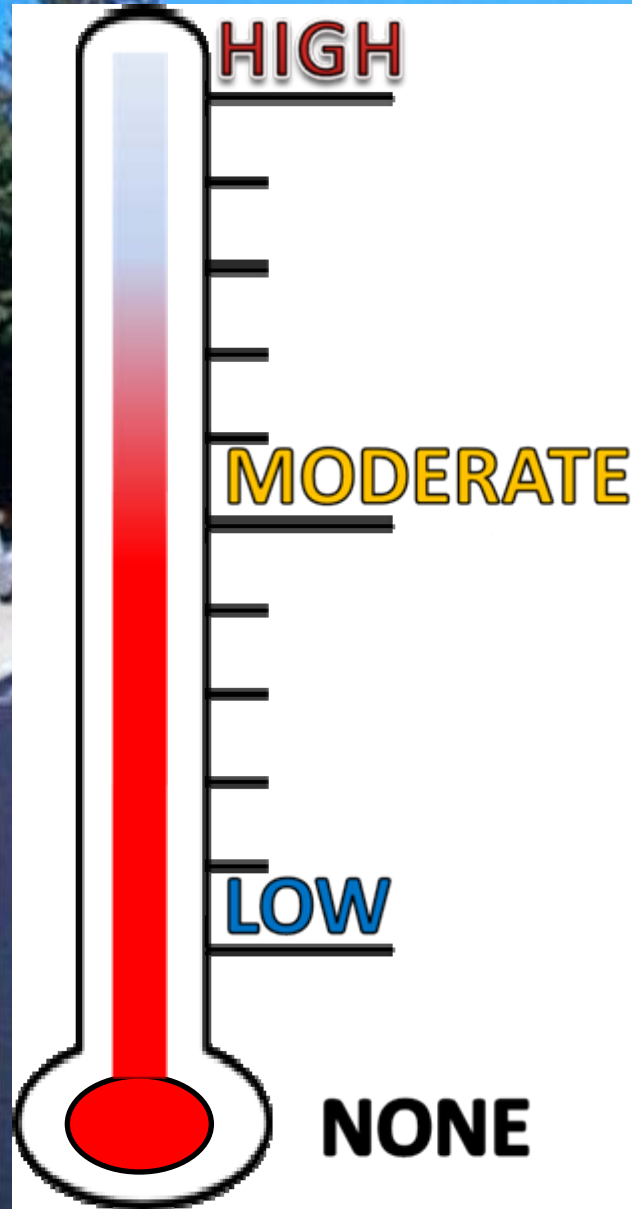
▪ Highway with Sidewalks

DEPTH \geq 0.15 ft.

\leq HALF WIDTH

PAVE THROUGH CROSSWALK

RISK METER



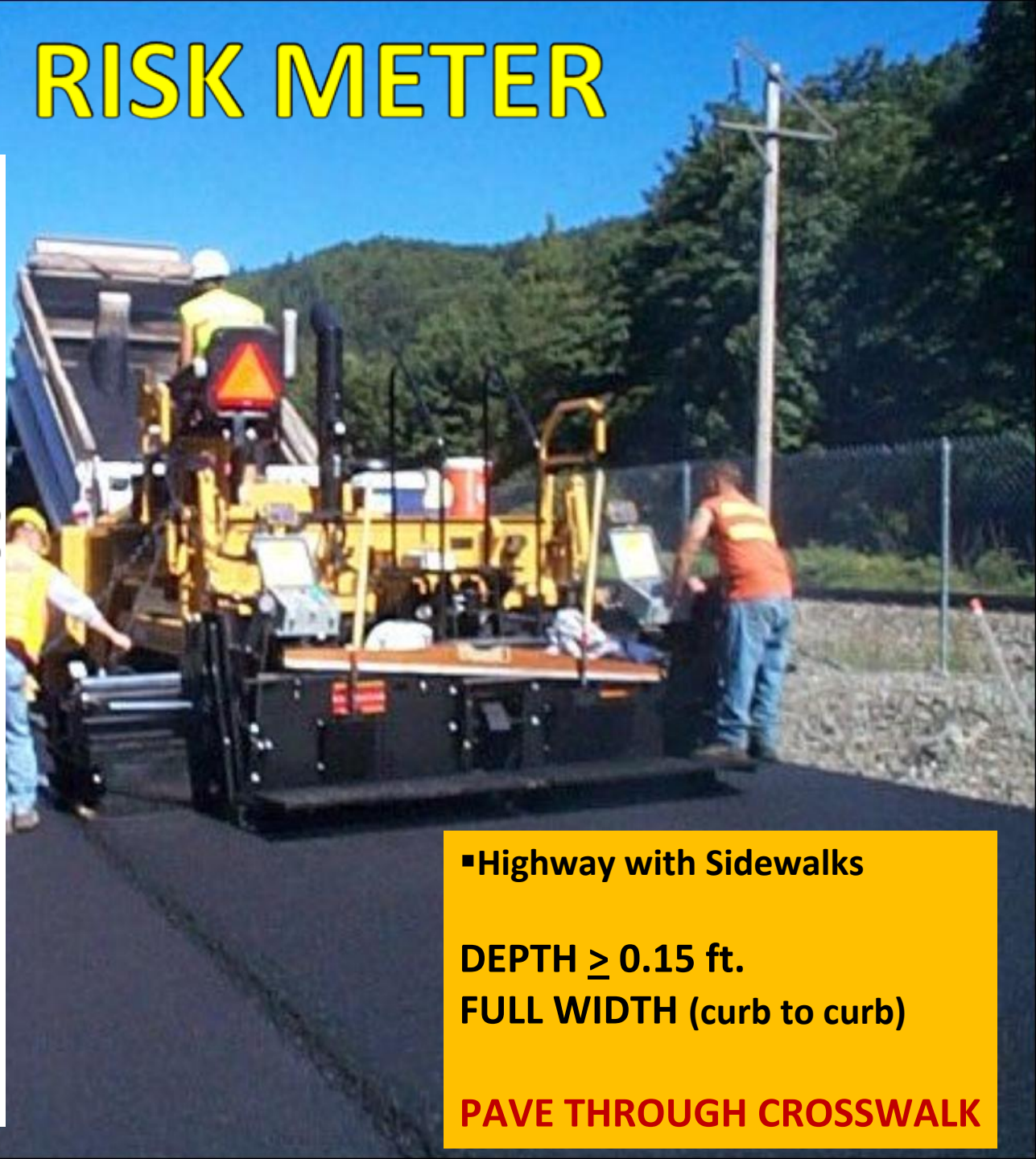
▪ Highway with Sidewalks

DEPTH = 0.04 – 0.12 ft.

FULL WIDTH (curb to curb)

PAVE THROUGH CROSSWALK

RISK METER



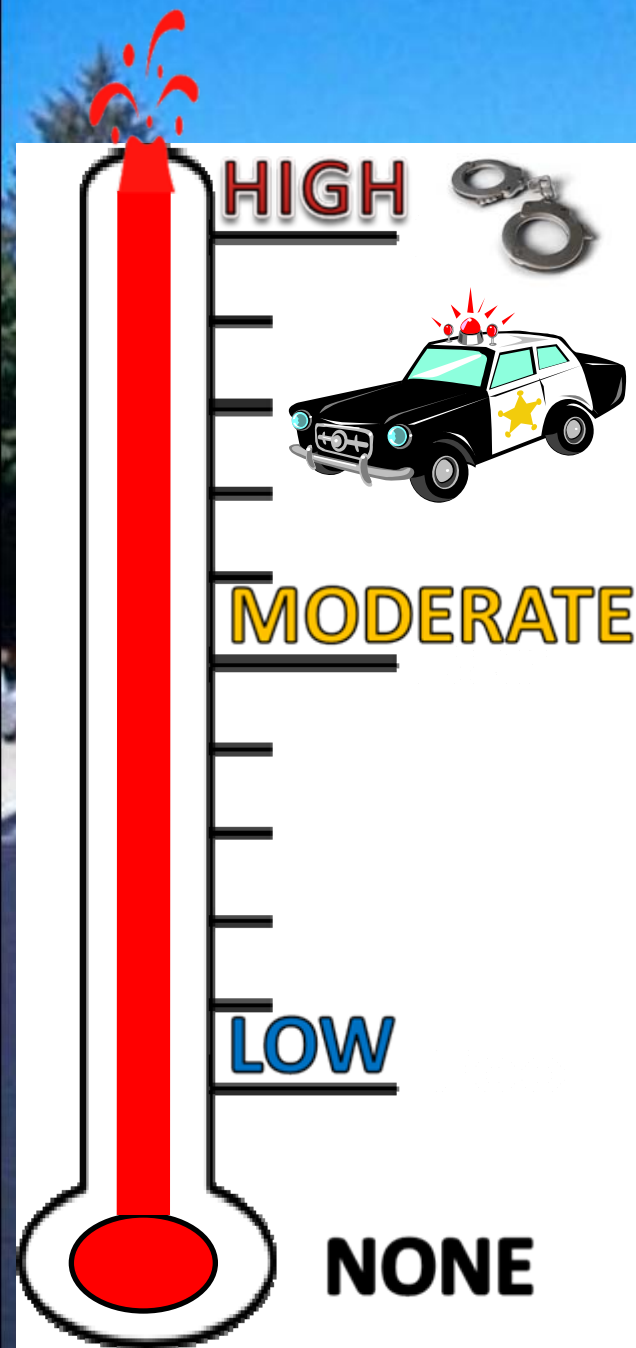
▪ Highway with Sidewalks

DEPTH \geq 0.15 ft.

FULL WIDTH (curb to curb)

PAVE THROUGH CROSSWALK

RISK METER



▪ Highway with Sidewalks

DEPTH \geq 0.15 ft.

FULL WIDTH (curb to curb)

PAVE THROUGH CROSSWALK

Training available through Washington State Local Technical Assistance Program (LTAP) Training Program -

“Pedestrian Accommodation Workshop”

– {16 hours}



Questions ?